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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/950,963	10/15/1997	JOEL A. DREWES	074022-3302	9997
30542	7590	04/07/2005	EXAMINER	
FOLEY & LARDNER				MARSCHEL, ARDIN H
P.O. BOX 80278				
SAN DIEGO, CA 92138-0278				
ART UNIT		PAPER NUMBER		
		1631		

DATE MAILED: 04/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action Before the Filing of an Appeal Brief</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	08/950,963	DREWES ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Ardin Marschel	1631

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 January 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1.  The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2.  The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3.  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because

- They raise new issues that would require further consideration and/or search (see NOTE below);
- They raise the issue of new matter (see NOTE below);
- They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See attached further explanation. (See 37 CFR 1.116 and 41.33(a)).

- The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
- Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
- Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
- For purposes of appeal, the proposed amendment(s): a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 3,4,18,19 and 51-54.

Claim(s) objected to: 25,55,57,59 and 61.

Claim(s) rejected: 1,2,5-12,23,26-34,36-50,56,58 and 60.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

- The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
- The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
- The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

- The request for reconsideration has been considered but does NOT place the application in condition for allowance because: for reasons of record as further explained as attached.
- Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_
- Other: \_\_\_\_\_.

## DETAILED ACTION

### Further explanation of item # 3 on the enclosed Advisory action:

The proposed amendment to claim 61 raises the new issue of an objection to this claim being directed to two different statutory classes of invention which is improper. A device is reasonably a machine under 35 USC 101 whereas a composition is cited in 35 USC 101 as another statutory class of invention. Claim 61 is proposed to be amended to be directed to a device or composition which as explained above is improperly directed to a machine (device) or composition which are different statutory classes of invention. Thus the proposed amendment raises a new issue that would require further consideration and/or search thus supporting this denial of entry of this proposed amendment.

### Further explanation of item # 11 on the enclosed Advisory action:

As an initial note, the Interview summary in applicants' REMARKS, filed 1/5/05, is not agreed with as there was no such interview held on 1/5/05, wherein agreement on all issues occurred.

The denial of entry of the amendment also results in maintaining the improper multiple dependence objection of claim 61 which is not otherwise argued.

The NEW MATTER rejection of claims 56, 58, and 60 is maintained due to the non-entry of the proposed amendment and also due to a lack of generic written support as argued by applicants pointing to page 28, lines 8-9 of the specification. Similar to the NEW MATTER issue of the office action, mailed 11/30/04, the page 28, lines 8-9 citation limits the "no interconnection" to being "within the materials". This "within the materials" limitation is not present in claim 56 and thus said page 28 citation fails to overcome the NEW MATTER rejection.

The rejection of claims 1, 2, 5-12, 23, 26-34, and 36-50 based on obviousness-type double patenting is maintained and reiterated from the previous office action, mailed 11/30/04. The basis for this rejection was set forth in said previous office action and not negated or specifically argued by applicants. Applicants allege that the instant claims are distinct from the copending application claims but fail to argue any basis for this. This argument therefore is an allegation without factual support and non-persuasive.

Claim objections

Claims 25, 55, 57, and 59 remain objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 3, 4, 18, 19, and 51-54 are allowable.

Papers related to this application may be submitted to Technical Center 1600 by facsimile transmission. Papers should be faxed to Technical Center 1600 via the Central PTO Fax Center. The faxing of such papers must conform with the notices published in the Official Gazette, 1096 OG 30 (November 15, 1988), 1156 OG 61 (November 16, 1993), and 1157 OG 94 (December 28, 1993)(See 37 CFR § 1.6(d)). The Central PTO Fax Center number is (571) 273-8300.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ardin Marschel, Ph.D., Supervisory Patent Examiner, whose telephone number is (571) 272-0718. The examiner can normally be reached on Monday-Friday from 8 A.M. to 4 P.M.

Any inquiry of a general nature or relating to the status of this application should be directed to Legal Instrument Examiner, Tina Plunkett, whose telephone number is (571) 272-0549.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

March 22, 2005

*Ardin H. Marschel 3/22/05*  
ARDIN H. MARSCHEL  
PRIMARY EXAMINER